CF 1051 (3)

BEFORE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (CG).

W.P. 3248 2003

petitioner : DAROGA SINGH, aged about 55 years,
S/o Shri Harihar Singh,
P.No. 40043 A.M. (C.O.)
Deptt. Utilities, Zone No. 531
Hindustan Steelworks Construction Limited,
UNIT - Bhilai, Tah. & Distt. DURG (CG).
R/O - Quarter No. 10A
Street - 32, Sector-5,
Bhilai - Nagar
Tah. & Distt. DURG (CG).

P.R No. 3161/03
Presented by Shri Anil Kumar Khan
dated 03.10.03

VERSUS.

Respondents : (1) HINDUSTAN STEELWORKS CONSTRUCTION LIMITED :
Through :- Dy. Manager (pers)/E.
HSCL, Bhilai Unit,
Tah. & Distt. DURG (CG).

(2) Assistant General Manager (personnel)
Hindustan Steelworks Construction
Department,
Co-Ordinate personnel Department,
KOLKATA 700-022.

petition Under Article 226/227 of the Constitution of India.

1. **particulars of the petitioner** :-

As given in the cause title.

NOTARY ... MP 13/11/03

contd.....2

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO. 3248 OF 2003

Daroga Singh

Vs.

Hindustan Steel Works Construction Limited and Another

O R D E R
(Dated 1st December 2005)

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO. 3248 OF 2003

Daroga Singh

Vs.

Hindustan Steel Works Construction Limited and Another

Present :- Shri V.G. Tamaskar, counsel for the petitioner.

Shri P.S. Koshy with Shri Vinod Deshmukh and Shri Anish Pandey, counsel for the respondents.

O R D E R
(Dated 1st December 2005)

Per Fakhruddin, J

Heard.

2. By this petition under Article 226/227 of the Constitution of India the petitioner prays for quashing of Annexure-P/3 dated 1-11-2002 & Annexure-P/4 dated 21-11-2002 and further that the payment be paid for 27 months and reinstated in service with full back wages and consequential reliefs.

3. The petitioner submitted an application for voluntary retirement on 18-10-2002 (Annexure-R/1) under the scheme of "Revised Voluntary Retirement Scheme" dated 7-10-2002. According to the Scheme the willing employees were required to submit their applications by 21-10-2002 and the Unit Personnel Department was required to send the same to the Corporation Office, Kolkatta on or before 28-10-2002 alongwith the recommendation of the Unit Head. The application of the petitioner duly recommended was sent to Head Office, Kolkatta

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on 23-10-2002. Thereafter the petitioner submitted an application on 28-10-2002, which was received in the Personnel Department, Bhilai on 30-10-2002 where the petitioner added certain conditions to his earlier application. Since conditional voluntary retirement is not entertained and the unit had already recommended for acceptance of the petitioner's voluntary retirement application and having send the same to Head Office, Kolkata, the conditional application of the petitioner was returned to him on the same day. The voluntary retirement application of the petitioner was accepted by the Corporate Office w.e.f. 30-11-2002 and the petitioner was relieved on that date.

4. The petitioner filed the petition mainly on the ground that he had right to withdraw his application for voluntary retirement before it is accepted.

5. The respondents denied the claim of the petitioner and contended that since the petitioner had accepted the retiral benefits under the Voluntary Retirement Scheme amounting to Rs.14,94,293=66 pending this petition. The petitioner is not entitled for any relief. The respondents have filed Annexure-R/2 showing the details of the amount paid. It is further stated that an amount of Rs.14,871/- was also paid towards difference of CPF. So far as balance amount is concerned, the respondents are stated in their return as under :

> *"That since the petitioner has not vacated the company's quarter inspite of receiving an amount of about fifteen lacs the company has withheld a meager amount which shall be paid to the petitioner*

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immediately on his vacating the quarter after adjusting the rent and other dues which the petitioner is suppose to pay for the occupation of the said quarter of the company."

6. Where an employee after taking voluntary retirement withdraws or accepts or utilized a part of the amount of voluntary retirement with the knowledge that it was the part of the VRS benefits, in such circumstances he is not entitled for the relief.

7. In the case of ***Punjab National Bank vs. Virender Kumar Goel and Others*** reported in ***(2004) 2 SCC 193*** the Supreme Court held that having accepted the benefit under the Scheme by withdrawal and utilization thereof, they are not permitted to approbate and reprobate.

8. In the case of ***Punjab & Sind Bank and Another vs. S. Ranveer Singh Bawa and Another*** reported in ***(2004) 4 SCC 484***, which was a case relating to voluntary retirement, the applicant filed an application for withdrawal of option for VRS. The Supreme Court held that though optee withdrew his option for VRS during currency thereof, but without any objection, he received monetary benefits under VRS and utilized the same. Under the circumstances, the Supreme Court held that in such a situation the principle of estoppel as discussed in *O.P. Swarnakar case*, (2003) 2 SCC 721 shall be applicable. It was also held that optee could not resile from VRS.

9. Shri Tamaskar, learned counsel appearing for the petitioner submits that the amount was withdrawn by the petitioner during pendency of the petition as the same was required for sustenance.

10. A bare perusal of para 4 of the judgment rendered in the case of ***Punjab & Sind Bank and Another*** (Supra) goes to show that one of the arguments advanced was to the effect that at the highest, it was receipt of payment under protest. In this connection, reliance was placed on the fact of pendency of the writ petition in the High Court. Hon'ble Supreme Court repealed the contention. Para 5 of the aforesaid judgment is relevant and quoted below :

> *"In the case of Bank of India v. O.P. Swarnakar this Court observed that estoppel is based upon the acceptance and retention of benefits, by one having knowledge or notice of the benefits from a contract or a transaction. The doctrine of estoppel is a branch of the rule against assumption of inconsistent positions. One who knowingly accepts the benefit of a contract is estopped from denying the binding effect on him of such contract. This rule has to be applied to do equity. It was accordingly held that those optees who knowingly received the payments and utilized them were not entitled to withdraw from VRS. In the case of Punjab National Bank v. Virendra Kumar Goel the applicant Bank submitted that some of the optees having accepted the benefits under VRS cannot be permitted to withdraw therefrom. In that matter, several review petitions were filed and in some of those review petitions, it was fond that the optees were aware of the credits in their accounts and they had even withdrawn the amounts deposited and had utilized the same and consequently in such cases, this Court did not permit the optees to withdraw from VRS. To the same effect is the order*

passed by this Court in the case of Bank of India v. Pale Ram Dhania. In the light of the above judgments, we have to consider the facts of the present case."

11. Having considered the facts and circumstances of the case, material on record and in view of the law laid down by the Supreme Court, no case is made out for quashing of Annexure-P/3 dated 1-11-2003 & Annexure-P/4 dated 21-11-2002.

12. At this stage, learned counsel appearing for the petitioner prays that a direction may be given to the respondents for releasing the balance voluntary retirement dues to the petitioner.

13. Learned counsel appearing for the respondents submits that whatever balance amount is there the same would be paid to the petitioner as the same is withheld because the company's accommodation has not been vacated.

14. So far as this aspect is concerned, the parties should settle the account as per law. It is made clear that if any grievance remains, it is open to the parties to pursue the matter in accordance with law.

15. Subject to the aforesaid observations, the petition stands disposed of.

Sd/-
Fakhruddin
Judge

Gowri